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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE ,

Plaintiff and Respondent,

v.

BENIGNO MELENDES SANCHEZ,

Defendant and Appellant.

F076906

(Super. Ct. No. VCF033068-93)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Tulare County. Kathryn T. Montejano, Judge.

Sylvia W. Beckham, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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\* Before Poochigian, Acting P.J., Franson, J. and DeSantos, J.

Appellant Benigno Melendes Sanchez appeals from the sentence the court imposed after it granted Sanchez's petition pursuant to Penal Code section 1170, subdivision (d)(2)<sup>1</sup> to recall his sentence and resentence him.<sup>2</sup> Following independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we affirm. However, our review of the record disclosed that there are several errors in Sanchez's abstract of judgment and we will direct the trial court to correct them.

### **FACTUAL AND PROCEDURAL HISTORY**

On April 17, 1992, Sanchez, who was then 17 years old, was armed with a tire iron, and a friend known as "Wino" was armed with a metal bat, when they burglarized the home of Leora Sneed in Pixley. Later that evening, Sneed returned to her home to discover that a screen had been ripped off a bedroom window and her house had been ransacked. Numerous items were missing including three televisions, a stereo, and a VCR. Additionally, Sneed found a tire iron and an aluminum baseball bat in the house that did not belong to her.

On Easter Sunday, April 19, 1992, Sanchez had been drinking all day before he walked by the house where 82-year-old James Mulkey and his 81-year-old wife, Thelma, lived. After jumping a chain link fence, Sanchez went into a truck parked in the yard to look for a stereo to steal, but he did not find one. Sanchez then walked around the back of the house, entered it through a window, and began looking for a VCR or stereo. James turned on a light in the hall and began yelling at Sanchez. He also tried to grab

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<sup>1</sup> All further statutory references are to the Penal Code, unless otherwise indicated.

<sup>2</sup> Section 1170, subdivision (d)(2), in pertinent part, provides: "When a defendant who was under 18 years of age at the time of the commission of the offense for which the defendant was sentenced to imprisonment for life without the possibility of parole has been incarcerated for at least 15 years, the defendant may submit to the sentencing court a petition for recall and resentencing. (§ 1170, subd. (d)(2)(A)(i).)"

Sanchez as Sanchez attempted to leave. Thelma then came into the hall and said she was going to call the police. During an interview with a detective, Sanchez stated that he then grabbed an object, possibly a cane, and struck James at least three times and he admitted that he may also have struck Thelma.

As Sanchez ran out of the house, he grabbed some keys that included the key to the truck that was parked outside. Sanchez got in the truck and drove through the gate of the chain link fence, dragging a piece of fence with him. After stopping to remove it, he drove off and abandoned the truck in a vineyard.

Meanwhile, neighbors summoned police who entered the house and found the Mulkeys in kneeling positions on the east and west sides of their bed. James was already dead from eight blows to the head from a blunt instrument. Thelma died a few days later from seven blows to the head from a blunt instrument. James's wallet and Thelma's purse were missing.

On April 29, 1992, while driving around with his two brothers near Calvin Hager's<sup>3</sup> house, Sanchez decided to break into the house to steal a television or a VCR. Sanchez had one of his brothers drop him off and told him to come back in a while. As Hager was taking groceries out of his truck, Sanchez approached him from behind and struck him three times on the head with a metal rod, causing him to lose consciousness. Sanchez then took a .22-caliber rifle from inside the house. When Hager regained consciousness, \$80 was missing from his wallet and his wristwatch was in a nearby cactus.

On July 2, 1993, a jury convicted appellant of two counts of murder (§ 187/counts 1 & 2), three counts each of first degree burglary (§ 459/counts 3, 7, & 9) and robbery

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<sup>3</sup> Hager was an older man with whom Sanchez was acquainted because Hager used to live next door to Sanchez's uncle.

(§ 211/counts 4, 5, & 8),<sup>4</sup> and vehicle theft (Veh. Code, § 10851/count 6). The murders were set at first degree and as to each murder the special circumstances—that they were committed in the commission of robbery and burglary (§ 190.2, subd. (a)(17)) and that Sanchez committed multiple murders (§ 190.2, subd. (a)(3))—were found true. Additionally, a use of a deadly weapon enhancement (§ 12022, subd. (b)) was found true in each count and a great bodily injury enhancement (§ 12022.7) was found true in counts 3, 4, and 5.

On October 28, 1993, the court sentenced Sanchez to a determinate term of 12 years four months and two consecutive indeterminate life without the possibility of parole (LWOP) terms.

On February 23, 1995, in an unpublished opinion, this court affirmed the judgment.

On June 1, 2017, pursuant to section 1170, subdivision (d)(2), Sanchez filed a “Petition of Juvenile Offender Sentenced to LWOP for Recall of Sentence and New Sentencing Hearing.”

On July 5, 2017, the People filed a reply to Sanchez’s petition.

On July 10, 2017, Sanchez filed a reply to the People’s reply.

On July 11, 2017, the court granted Sanchez’s petition and scheduled a sentencing hearing.

On October 30, 2017, defense counsel filed a sentencing memorandum on Sanchez’s behalf in which she argued that because of changes in the law since Sanchez was originally sentenced, the maximum penalty a juvenile who commits special circumstance murder could receive was life with the possibility of parole. Alternatively,

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<sup>4</sup> Sanchez was convicted of first degree robbery in counts 4 and 5 and of second degree robbery in count 8.

defense counsel argued that consideration of the relevant factors (see § 1170, subd. (d)(2)(F) & (I))<sup>5</sup> compelled a sentence of life with the possibility of parole.

On November 1, 2017, the People filed a resentencing brief in which they argued that an analysis of the section 1170, subdivision (d)(2)(F) factors showed that Sanchez was not a suitable candidate for resentencing to a term of life imprisonment with the possibility of parole.

At a hearing on November 3, 2017, the court heard statements from James Mulkey's family members and from Sanchez and continued the matter.

On November 9, 2017, after hearing argument from counsel and discussing the application of the section 1170, subdivision (d)(2)(F) factors to Sanchez, the court denied

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<sup>5</sup> Section 1170, subdivision (d)(2)(F) lists the following factors the court may consider when it resentences a successful petitioner: “(i) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law. [¶] (ii) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the defendant was sentenced to life without the possibility of parole. [¶] (iii) The defendant committed the offense with at least one adult codefendant. [¶] (iv) Prior to the offense for which the defendant was sentenced to life without the possibility of parole, the defendant had insufficient adult support or supervision and had suffered from psychological or physical trauma, or significant stress. [¶] (v) The defendant suffers from cognitive limitations due to mental illness, developmental disabilities, or other factors that did not constitute a defense, but influenced the defendant's involvement in the offense. [¶] (vi) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing himself or herself of rehabilitative, educational, or vocational programs, if those programs have been available at his or her classification level and facility, using self-study for self-improvement, or showing evidence of remorse. [¶] (vii) The defendant has maintained family ties or connections with others through letter writing, calls, or visits, or has eliminated contact with individuals outside of prison who are currently involved with crime. [¶] (viii) The defendant has had no disciplinary actions for violent activities in the last five years in which the defendant was determined to be the aggressor.” The court may also consider other relevant criteria as long as it identifies them, provides reasons for adopting them, and states why the defendant does or does not satisfy the criteria. (§ 1170, subd. (d)(2)(I).)

the defense's request to impose a term of life with the possibility of parole. It also continued the matter to allow the probation department to prepare a probation report.

On January 10, 2018, the court sentenced Sanchez to an aggregate determinate term of 10 years and an LWOP sentence plus a one-year arming enhancement on one murder conviction and a consecutive LWOP sentence plus a one-year arming enhancement on his other murder conviction.

On January 22, 2018, Sanchez filed a timely appeal.

Sanchez's appellate counsel filed a brief that summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende, supra*, 25 Cal.3d 436.) Sanchez has not responded to this court's invitation to submit additional briefing. However, our review of the record disclosed that Sanchez's abstract of judgment contains several errors. In the heading section, Sanchez's abstract of judgment for his indeterminate sentence (Judicial Council form CR-292) erroneously indicates that his date of birth is February 13, 1974, rather than his correct birthdate of February 13, 1975. Additionally, in section 2 it erroneously indicates that the court imposed a term of one year one month on the arming enhancement in count 2 when the actual term imposed on that enhancement was only one year.

In the heading section, Sanchez's abstract of judgment for his determinate sentence (Judicial Council form CR-290) erroneously indicates that Sanchez's date of birth is February 13, 1971. Further, in section 1, in the column with the heading "CRIME," the abstract contains the following errors: it indicates that in count 9 Sanchez was convicted of first degree robbery rather than first degree burglary; it indicates that in counts 4 and 5 Sanchez was convicted of first degree burglary rather than first degree robbery; and in count 8 it erroneously indicates that Sanchez was convicted of first degree burglary rather than second degree robbery. Additionally, as to each of the errors noted above in section 1, in the column with the heading "SECTION NO." the abstract

lists the wrong code sections for the offenses Sanchez was convicted of in those counts. Under this heading, it also lists the wrong code section for Sanchez's first degree burglary conviction in count 3. Moreover, in sections 9(b) and 13 the abstract erroneously indicates that the court ordered Sanchez to pay restitution of \$6,795.94, which it did not.

Further, following an independent review of the record, except for the clerical errors in the abstract of judgment noted above, we find that no reasonably arguable factual or legal issues exist.

### **DISPOSITION**

The trial court is directed to prepare amended abstract of judgments that correct the errors noted above and to forward certified copies to the appropriate authorities. In all other respects, the judgment is affirmed.